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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,051	06/02/2005	John Francis Dufort	001058-00025	4299
27557	7590	05/22/2006	EXAMINER	
BLANK ROME LLP 600 NEW HAMPSHIRE AVENUE, N.W. WASHINGTON, DC 20037			LOWEN, ALYSSA	
			ART UNIT	PAPER NUMBER

3711

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/517,051

Applicant(s)

DUFORT, JOHN FRANCIS

Examiner

Alyssa M. Lowen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/20/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 4/20/05 is in compliance with the provisions of 37 CFR 1.97 and 37 CFR 1.98. Accordingly, the information disclosure statement is being considered by the examiner.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

3. Claims 2, 12 and 20 are objected to because of the following informalities: In claim 2 the word "is" starts with a capital letter. In claim 12 the word "an" is misspelled as "art" and in claim 20 the word "stem" is misspelled as "stern". Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 8-11, 18-22, 24 and 26-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Pfister (DE 10013829 A1). Pfister discloses a spinning top having a body (12) and a stem (11). The stem is movable between a first position where the stem is entirely received within the body such that it is substantially parallel to the body

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(Fig. 1A) and a second position in which the stem extends perpendicularly through an opening formed in the body (Fig. 1B). The opening through which the stem extends in the second position is generally through the center of mass of the body (Fig. 1C). The stem can be moved back and forth between the first and second positions (Figs. 1A & 1B). The stem has arms or pivot pins (119) protruding from its sides engaging holes (14) in the body thereby pivotally mounting the stem to the body (Figs. 1A & 1B). The opening is sized to allow the stem to move there through when moving between the first and second positions (Figs. 1A & 1C). The pivot pins form the pivot bar portion of a latch that engage the recess or notch portions of the latch in the body when the stem is in the second position (Fig. 1C). The profile or outline of the stem varies along the length of the stem and has a larger cross-sectional area halfway along its length formed by a circular portion (Fig. 1D). The stem has a pointed tip (114) and a handle portion (112). The body is a substantially planar circular disk (Fig. 1B).

6. Claims 1, 7 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by B ker (DE 29515347 U1). B ker discloses a spinning top having a body (1) and a stem (2). The stem is movable between a first position where the stem is entirely received within the body such that it is substantially parallel to the body (Fig. 1) and a second position in which the stem extends perpendicularly through an opening formed in the body (Fig. 4). The stem is separable from the body and has a non-circular profile or outline (Fig. 5).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bükér and Heidenreich (1139119). Bükér discloses the basic inventive concept, substantially as claimed, with the exception of an outer element. Heidenreich discloses a circular disk shaped piece of paper with a center hole that functions as an outer element attaching to and extending over a majority of a top part of a body and partially secured by a flange on the body of the toy (page 1 lines 47-53). It would have been obvious to one of ordinary skill in the art from the teaching of Heidenreich to include the outer element in order to incorporate advertising matter onto the toy. The outer element being removably mounted to the top and bottom of the body would have been an obvious matter of design choice to a person of ordinary skill in the art because Applicant has not disclosed that having the outer covering being removable from both the top and bottom of the body provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the covering being permanently adhered to just the top of the body because it would allow an advertisement to be easily seen and prevent a person from removing the advertisement at a later time. In regard to the outer element being made of resilient material, examiner notes that the mere

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selection of known materials as recited in claim 17, on the basis of suitability for the intended use would be entirely obvious. See in re Leshin, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one of ordinary skill in the art to provide Heidenreich with resilient material in order to use a known material suitable for the intended use.

9. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister and Sutherland (2879066). Pfister discloses the basic inventive concept, substantially as claimed, with the exception of the stem having a pointed tip on each end. Sutherland discloses a toy top having a stem with a pointed tip on each end (Fig. 2). It would have been obvious to one of ordinary skill in the art from the teaching of Sutherland to have both ends with a pointed tip so that the toy can be used on either side increasing its amusement value.

10. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister. Pfister discloses the basic inventive concept, substantially as claimed, with the exception of the components being formed of plastic material. Examiner notes that the mere selection of known materials as recited in claim 28, on the basis of suitability for the intended use would be entirely obvious. See in re Leshin, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one of ordinary skill in the art to provide Pfister with plastic material in order to use a known material suitable for the intended use.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Lowen whose telephone number is 571-272-2684. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AML

EUGENE KIM
SUPERVISORY PATENT EXAMINER